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Oceans and the law of the sea: oceans and the law of the sea

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the letter dated 24 January 2002 from the Secretary-General of the International Maritime Organization (IMO) (see annex) transmitting IMO Assembly resolution A.922(22) on the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.

* A/57/50/Rev.1

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Annex

Letter dated 24 January 2002 from the Secretary-General of the International Maritime Organization addressed to the Secretary-General

In my letter of 8 June 2000 (A/55/311, annex) I had referred to the concern caused to this organization (IMO) and its member Governments by the increasing number and seriousness of acts of piracy and armed robbery against ships and seafarers in various parts of the world. I had also expressed the appreciation of IMO of the support of the General Assembly of the United Nations for its efforts to prevent and suppress these unlawful acts and to ensure that their perpetrators did not go unpunished. Such support has been demonstrated on a number of occasions and, most recently, by the adoption, on 28 November 2001, of resolution 56/12 on oceans and the law of the sea. In that resolution, the General Assembly, among other things, reiterated its call upon States to cooperate fully with IMO and implement its relevant guidelines.

At its recent twenty-second session (19-30 November 2001), the IMO Assembly, bearing in mind the rights and obligations of States under the international law of the sea, including the provisions of the 1982 United Nations Convention on the Law of the Sea, and recognizing with concern the grave danger to the safety of life at sea, maritime safety and the protection of the marine environment arising from acts of piracy and armed robbery against ships, adopted resolution A.922(22) on the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships. By so doing, the IMO Assembly also responded positively to the recommendation made at the second session, in May 2001, of the United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs, that IMO should be invited to complete quickly the said Code.

In adopting the aforementioned resolution, the IMO Assembly invited Governments to cooperate in the interests of safety of life at sea and environmental protection by increasing their efforts to suppress and prevent acts of piracy and armed robbery against ships, and requested me to bring the resolution and the Code annexed thereto to the attention of the United Nations, and other international organizations concerned, for information and appropriate action. I am pleased to do so by attaching a copy of both herewith (see appendix) and should be most grateful if you would bring them to the attention of the appropriate bodies of the United Nations for information and action as they may deem appropriate.

(*Signed*) W. A. **O'Neil**
Secretary-General

Appendix

Resolution A.922(22) adopted on 29 November 2001 by the Assembly of the International Maritime Organization during its 22nd session

CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

RECALLING ALSO the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1988 and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf,

NOTING resolution A/RES/55/7 on Oceans and the law of the sea, by which the United Nations General Assembly, at its fifty-fifth session, urged all States, and in particular coastal States, in affected regions to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea, including through regional co-operation, and to investigate or co-operate in the investigation of such incidents wherever they occur and bring the alleged perpetrators to justice in accordance with international law,

NOTING ALSO the approval by the Maritime Safety Committee of MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.2 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,

BEARING IN MIND the rights and obligations of States under the international law of the sea, including the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS),

RECOGNIZING WITH DEEP CONCERN the grave danger to safety of life at sea, maritime safety and the protection of the marine environment arising from acts of piracy and armed robbery against ships,

RECOGNIZING ALSO that the number of acts of piracy and armed robbery against ships continues to increase worldwide,

BEING AWARE that the fight against piracy and armed robbery against ships is often impeded by the absence of effective legislation in some countries for the investigation of reported cases of piracy and armed robbery against ships,

BEING ALSO AWARE that, when arrests are made, some Governments are lacking the legislative framework and adequate guidelines for investigation necessary to allow conviction and punishment of those involved in acts of piracy and armed robbery against ships,

TAKING INTO ACCOUNT the recommendation made at regional seminars and workshops organized by IMO within the context of the 1998 anti-piracy project that the development of a code of practice for the investigation and prosecution of acts of piracy and armed robbery against ships should be pursued on a priority basis, to ensure appropriate punishment for the crime of piracy and armed robbery against ships,

BEING CONVINCED of the need for a code of practice to be adopted and promulgated as soon as possible,

BEING ALSO CONVINCED of the need for Governments to co-operate and to take, as a matter of the highest priority, all necessary action to prevent and suppress any acts of piracy and armed robbery against ships,

HAVING CONSIDERED the recommendation of the Maritime Safety Committee at its seventy-fourth session,

1. ADOPTS the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships set out in the Annex to the present resolution [see attachment];

2. INVITES Governments to co-operate in the interests of safety of life at sea and environmental protection by increasing their efforts to suppress and prevent acts of piracy and armed robbery against ships;

3. ALSO INVITES Governments to develop, as appropriate, agreements and procedures to facilitate co-operation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;

4. ENCOURAGES Governments to apply the provisions of international instruments aimed at improving safety of life at sea and the prevention and suppression of acts of piracy and armed robbery against ships;

5. REQUESTS the Secretary-General to bring this resolution and the annexed Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships to the attention of Member Governments, the United Nations and other international organizations concerned, for information and appropriate action;

6. FURTHER REQUESTS the Maritime Safety Committee and the Legal Committee to keep the Code under review and to take action as they may deem appropriate;

7. URGES Governments to take actions, as set out in the Code of Practice, to investigate all acts under their jurisdiction of piracy and armed robbery against ships, and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts;

8. FURTHER URGES all Governments responsible for ports, anchorages and sea areas to inform the Organization of specific advice they have made available to ships on the subject of piracy and armed robbery against ships for promulgation by the industry to ships concerned.

Attachment

ANNEX

CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

1 PURPOSE OF THIS DOCUMENT

The purpose of this document is to provide IMO Member States with an *aide-mémoire* to facilitate the investigation of the crimes of piracy and armed robbery against ships.

2 DEFINITIONS

For the purpose of this Code:

2.1 **" Piracy"** means unlawful acts as defined in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

2.2 **"Armed robbery against ships"** means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board such a ship, within a State's jurisdiction over such offences.

2.3 **" Investigators"** means those people appointed by the relevant State(s) to intervene in an act of piracy or armed robbery against a ship, during and/or after the event.

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* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

" Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)."

3 PRIOR CONSIDERATIONS

Legislation

3.1 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.

3.2 States are encouraged to ratify, adopt and implement the practical applications of the 1982 United Nations Convention on the Law of the Sea, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Navigation and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

Action by coastal/port States

3.3 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal/port States should make every endeavour to ensure that these masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.

Coastal State agreements

3.4 Coastal States are encouraged, where appropriate, to enter into bilateral or multilateral agreements to facilitate the investigation of piracy and armed robbery against ships.

4. TRAINING OF INVESTIGATORS

4.1 Training of investigators should cover the **primary purposes of an intervention/ investigation**:

.1 In any cases where persons on board have been abducted or have been held hostage, the primary objective of any law enforcement operation or investigation must be their safe release. **Their rescue must take precedence over all other considerations.**

.2 Arrest of offenders.

.3 Securing of evidence, especially if an examination by experts is needed.

.4 Dissemination of information which may help prevent other offences.

.5 Recovery of property stolen.

.6 Co-operation with the authority responsible for dealing with any particular incident.

4.2 Investigators must be trained and experienced in conventional investigative techniques, and should be as familiar as possible with a ship environment. Maritime knowledge will of

course be an advantage, and access to persons with knowledge on maritime procedures useful, but it is investigative skills which are vital.

4.3 Trainers may wish to emphasise that offenders could still be at the scene of the crime when investigators arrive on scene.

5 INVESTIGATIVE STRATEGY

5.1 It is essential that those employed by security force agencies to investigate piracy or armed robbery against ships shall have demonstrated investigation skills and competencies, as well as maritime knowledge/experience. Offenders are ultimately land-based, and it is likely that it is on land that they will be most vulnerable to detection. Associates may be prepared to give information against them, for example, and it is there that they will be spending the proceeds of their crime. It is also probable that offenders will be involved in other offences such as carrying illegal immigrants, and useful intelligence may be lost if investigators are too compartmentalised in their approach.

5.2 Conventional detective methods offer the best chance of identifying and apprehending pirates and perpetrators of armed robbery.

5.3 It may be appropriate to link anti-piracy measures to anti-smuggling patrols or efforts to prevent drug smuggling or unlawful drug trafficking, thus minimising duplication of effort and saving resources. Wherever possible, an inter-agency approach to investigation should be adopted.

Overall management/other liaison/co-operation

5.4 It is important to identify the person and/or organization in charge of an investigation. Confusion or delay in the early stages will at best result in delayed investigative opportunities and loss of evidence. At worst, it may increase the danger to any crewmen held captive by the offenders, possibly resulting in avoidable loss of life or injury.

5.5 Recognition should be given to the different national interests that may be involved in each case, including: flag State of the ship; country in whose territorial waters the attack took place; country of suspected origin of the perpetrators; country of nationality of persons on board; country of ownership of cargo; and country in which the crime was committed. In cases of piracy and armed robbery against ships outside territorial waters, the flag State of the ship should take lead responsibility, and in other cases of armed robbery the lead should be taken by the State in whose territorial waters the attack took place. In all cases it should be recognised that other States will have legitimate interests, and therefore liaison and co-operation between them is vital to a successful investigation.

5.6 It is important to involve relevant organizations (e.g. Interpol, ICC/International Maritime Bureau) at an early stage, where appropriate, in order to take account of the possibility that transnational organized crime may be involved.

5.7 If in the course of the investigation there is an unavoidable need to change the investigators in charge, a full debriefing should take place.

6 DEALING WITH AN INITIAL REPORT

When information is received that a ship is under attack, or a recently-committed major offence is reported and the ship is accessible, investigators should attend without delay. The responsibilities of those who first attend crime scenes will be the following:

Preservation of life

.1 They must secure medical treatment for all persons injured.

Prevention of the escape of offenders

.2 They must be alert to the possibility that, in some circumstances, offenders may still be in the vicinity.

Warnings to other ships

.3 Whenever practicable warnings should be issued to other ships in the vicinity which may be vulnerable to attack.

Protection of crime scenes

.4 Recovery of forensic material from a crime scene has the potential to provide evidence to identify offenders. Equally, interpretation of what happened at the scene will help investigators and determine the outcome of the investigation. It is therefore vital that crime scenes be protected until appropriately qualified personnel arrive to examine them. This point must be fully understood by the master, crew and shipowner of any ship involved.

.5 The initial phases of the law enforcement and emergency services' response present the greatest risk of scene contamination. Personnel co-ordinating the law-enforcement response should be aware of the risk of contamination and advise persons attending scenes, including other law enforcement officials and naval personnel, accordingly.

.6 They must ensure that the authorities in the country with lead responsibility for investigating any crime are informed of the details of the incident and given the opportunity to conduct an investigation into it. Any evidence, details of action taken, etc should be passed to the State with the lead responsibility.

Securing evidence

.7 Focused questioning at the crime scene may lead to information which, by being rapidly passed to all appropriate authorities, could lead to the identification or arrest of the offenders, e.g. description of offenders, description of ship and direction ship was last seen heading in.

.8 Law enforcement officials first attending a scene must appreciate the importance of their role in gathering and passing on as quickly as possible relevant evidence.

even if the offenders have escaped. Mistakes or omissions at the outset may have serious implications for the subsequent investigation.

.9 Investigators should bear in mind that recovery of property during the investigation is important, as it may become evidence in the event of any prosecution.

7 THE INVESTIGATION

Proportionality

The course of an investigation will to a large extent depend on the circumstances of the offence. In this regard the investigating agency will wish to take account of the " seriousness" of the incident. This will range from stolen property to loss of life. Consequently, the action to be pursued should be proportionate to the crime committed and consistent with the laws that were violated. The following will, however, be common to all piracy and armed robbery investigations:

Establishing and recording of all relevant facts

.1 All relevant facts must be recorded in a systematic way. Most law enforcement agencies use multi-purpose crime reporting forms, but officers dealing with offences at sea must be sure to include the additional information which may subsequently prove essential in legal proceedings in these cases e.g. weather, sea state, position, direction of travel and speed of the ship, a detailed description of the ship and so forth.

.2 Photographs and videotapes taken of and on a ship will help investigators and witnesses to explain subsequently what happened.

.3 Investigators must bear in mind that the laws governing offences committed at sea allow, in some circumstances, for legal proceedings in countries other than those where the investigators may be based. Investigations must therefore be sufficiently comprehensive and detailed to make it possible to explain what happened to courts other than the investigators' own, possibly several years after the offences have been committed. The *modus operandi* of investigators has to be described in the investigation report.

Recording of individual witness accounts

.4 These should be recorded in a formal manner, acceptable for use in subsequent court proceedings. Witness accounts will form the basis of any prosecution case and untrained personnel should not be used for this important task.

.5 Witness accounts must be recorded at the earliest opportunity, as memories fade and accounts may be influenced by contact with other witnesses and media reports.

.6 Where witnesses speak languages different from that of the investigators, as will happen frequently in piracy cases, their accounts must be recorded in their own

languages and through use of properly qualified interpreters when this can be done within a reasonable timescale. Investigators should be aware that an account signed by a witness, or indeed a suspect, in a language foreign to that person may be valueless in court proceedings. It is important, therefore, to establish the legal requirements for the validity of evidence in each case.

.7 Experience has proved that witnesses in piracy cases, and particularly those who have been subjected to violence, are likely to be exceptionally distressed. Their experience will have been all the worse if they have been held captive for a long period and/or been in fear of death, and the situation will be exacerbated still further if they are far from home. Investigators should bear these factors in mind and deal with them sympathetically and patiently if they are to elicit all relevant facts.

.8 Witnesses should be interviewed separately from each other, when this can be done within a reasonable timescale, in order to protect the integrity of the individual accounts of the incident.

.9 Investigators should focus upon obtaining specific descriptions of the individuals involved in the piracy incident, particularly noting any distinguishing characteristics of the "leader".

.10 If more than one offender is involved, investigators should attempt to obtain particular information from the witnesses about the actions of each individual offender, rather than be satisfied with general statements about what "the hijackers" or "the pirates" did on the ship.

Detailed forensic examination of scenes

.11 Detailed forensic examination of the crime scene, particularly in serious cases including cases of homicide, offers investigators the best opportunities of establishing crucial information and evidence which may ultimately result in the case being solved.

.12 Investigators should secure particular objects or places on the ship where the offenders may have left fingerprints or other latent prints of value.

.13 Investigators will be well advised to take advantage of the full range of specialist services available to them.

.14 Investigators should take into consideration the need not to detain ships or impede work on board longer than is strictly necessary to carry out the forensic examination.

Search of intelligence databases

.15 Crimes must not be treated in isolation.

.16 Offenders may be responsible for similar crimes not yet solved, but when the evidence from those cases is accumulated and considered, opportunities of

identifying offenders may emerge. Appropriate databases, including those held by the International Maritime Bureau in Kuala Lumpur, Malaysia, should be searched to identify any series of offences. However, usage of private databases has to be compatible with the law governing the investigation. Consideration should be given to contacting Interpol in case they have any information on the offenders.

.17 Equally, offenders may have previous convictions, the details of which could link them to crimes under investigation.

Distribution of information and intelligence to appropriate agencies

.18 An important product of an effective investigation, even if it does not lead to any arrests, should be the generation of intelligence, and systems should be in place to ensure that potentially useful intelligence is disseminated to all appropriate parties. These might include law enforcement agencies, naval authorities, coastguards, harbour masters and others who might need it, and could act on it according to their national regulations.